

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

BKJ No. 04-43282

In re:

David Lee Cooper and Jane Cameron
Cooper,

Debtors.

**NOTICE OF HEARING AND MOTION
FOR TURNOVER OF PROPERTY
AND AWARD OF ATTORNEY'S FEES**

TO: The Debtors above-named and their attorney, Clinton E. Cutler, Fredrikson & Byron,
P.A., 200 South 6th Street, Suite 4000, Minneapolis, MN 55402-1425.

1. Randall L. Seaver, the Chapter 7 Trustee herein, moves the Court for the relief
request below and gives Notice of hearing herewith.

2. The Court will hold a hearing on this motion at 10:30 a.m. on December 1, 2004
Courtroom No. 7 West, U.S. Bankruptcy Court, 300 South Fourth Street, Minneapolis, MN
55415 or as soon thereafter as counsel can be heard. Under applicable rules, any objection must
be in writing, be delivered to the Trustee and the United States Trustee, and be filed with the
clerk, not later than November 24, 2004 which is 7 days before the above date or filed and served
by mail not later than November 19, 2004 which is 10 days before the time set for hearing in
accordance with Local Rules. **UNLESS A RESPONSE IS TIMELY SERVED AND FILED,
THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

3. This Court has jurisdiction over this Motion under 28 U.S.C. §157 and §1334 and
Bankruptcy Rule 5005. This Motion is filed under Local Rule 9013-2, this proceeding arises
under 11 U.S.C. §542 and Local Rule 6072-1.

4. The petition commencing this Chapter 7 case was filed on June 9, 2004. The case is now pending in this Court.

5. The Debtors scheduled “wedding ring and miscellaneous jewelry left from late wife’s estate” (collectively “Jewelry”) as having a value of \$1,453. The Trustee offered, subject to Bankruptcy Court approval, to sell the Jewelry to the Debtors for the pawn shop purchase valuation. The Trustee has been provided by the Debtors with a valuation totaling \$2,485. The Debtors offered the Trustee \$1,650 for the Jewelry. A copy of a letter from David Cooper with the valuation is attached as Exhibit A. The Trustee refused that offer and told the Debtors he would sell the Jewelry to them for \$2,485 and if they did not accept that offer, to deliver the Jewelry to the Trustee’s office at 9:30 a.m. on November 5, 2004. A true and correct copy of the Trustee’s October 21, 2004 letter to that effect is attached as Exhibit B.

6. On November 3, 2004, David Cooper corresponded with the Trustee indicating, among other things, that he was refusing to deliver the Jewelry to the Trustee. The Jewelry is property of the bankruptcy estate and the Debtor has no right to withhold the Jewelry from the Trustee.

7. Pursuant to 11 U.S.C. §521(3)(4), the Debtors are required, among other things, to cooperate with the Trustee as necessary to enable the Trustee to perform the Trustee’s duties, and to surrender to the Trustee all property of the estate. Bankruptcy Rule 4002(4) also requires the Debtors to cooperate in the administration of the estate. The Debtors have not complied with their obligations in this matter. As a direct result of their failure to discharge their duties, the bankruptcy estate has incurred attorney’s fees in bringing this turnover motion which would not otherwise have been incurred. The Debtors should bear the financial burden of their failure to

discharge their obligations, and the estate should be awarded \$300 in attorney's fees to be paid by the Debtors.

WHEREFORE, the Trustee requests an Order of the court ordering the Debtors within 2 days from the date of the hearing on this motion:

1. To turnover to the Trustee all scheduled "wedding ring and miscellaneous jewelry left from late wife's estate."
2. To pay the sum of \$300 to the Trustee for attorney fees incurred in bringing this turnover motion.

FULLER, SEAVER & RAMETTE, P.A.

Dated: November 4, 2004

By: /e/ Randall L. Seaver
Randall L. Seaver 152882
12400 Portland Avenue South, Suite 132
Burnsville, MN 55337
(952) 890-0888

Attorneys for Randall L. Seaver, Trustee

VERIFICATION

I, Randall L. Seaver, Trustee for the Bankruptcy Estate of David Lee Cooper and Jane Cameron Cooper named in the foregoing Notice of Hearing and Motion for Turnover of Property declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on November 4, 2004

/e/ Randall L. Seaver
Randall L. Seaver, Trustee

VIA FAX - FOUR (4) PAGES TOTAL

5201 Vincent Ave. South
Minneapolis, MN 55410

October 13, 2004

Mr. Randall L. Seaver
Portland Corporate Center, Suite 132
12400 Portland Ave South
Burnsville, MN 55337

re: Chapter 7 bankruptcy case no. 04-43282

Dear Mr. Seaver:

I am writing in response to your letter of September 15th.

1) We will purchase the piano and the cornet from the estate for \$150 and \$100, respectively, as shown in my September 9th letter to you. These values were quoted verbally by two music stores, as noted in that letter, but I will not be getting written offers from them. They both require physical inspection of the piano in their store, which is not practical, and neither would give me a firm offer on the cornet because of its age (44 years). Neither store would even assure me that it would be a buyer for the cornet at any price because of its age and damaged condition.

2) We have already obtained pawn shop valuation of each item of jewelry, as noted in my letter and attached here. Note that the total value increased from our original \$2,106 filing estimate to approx. \$2,485. We will purchase all of the listed jewelry for \$1,650.

3) Please advise of next steps on the firearms and exercise equipment.

4) The Alliance Bank transactions were as follows:

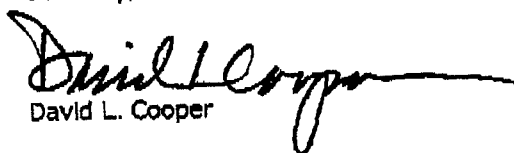
a. \$3,000.18 was a telephone EFT payment made to Jane's US Bank VISA credit card. Her copy of the statement showing this payment could not be located, so we have enclosed a replacement copy that was faxed to us by US Bank.

b. \$5,683.30 was the total of 12 money order payments made in mid-May for insurance premiums due. Insurers included Medica, HealthPartners, Manulife Financial (2 policies), Lincoln Benefit Life, OneBeacon, Allianz Life, John Hancock, State Farm (2 policies), Horace Mann and First Colony.

c. \$2,000.00 was an earlier telephone EFT payment made to Jane's US bank VISA credit card. A statement showing this payment is enclosed.

We look forward to concluding our bankruptcy case as soon as possible. Please advise of further information requests.

Sincerely,


David L. Cooper

cc: Clint Cutler

EXHIBIT A

David L. & Jane C. Cooper jewelry valuations
Chapter 7 bankruptcy case no. 04-43282

<u>item description</u>	<u>pawn shop value *</u>
Paula Cooper (deceased) jewelry:	
engagement-wedding rings	\$ 150
gold pendant with 3 diamonds and chain	70
illigree carved wedding band	10
gold ring with coral	15
antique gold earrings with opals (David wedding gift)	20
gold ring with single pearl	20
gold shrimp style earrings	3
gold faceted ball earrings	7
Paula's wedding band	18
narrow gold carved wedding band	4
gold butterfly charm	1
gold puffed heart charm	1
gold heart with diamond charm	1
gold ring with oval moss opate	10
gold ring with amethysts and diamonds	25
gold ring with jade	10
gold ring with opal	30
antique gold ring with 3 opals (parents wedding gift)	15
gold ring with lapis	25
gold earrings with pearls and diamonds	15
gold ring with 5 diamonds	90
gold pin with diamond and 2 pearls	80
double loop gold ring with 2 diamonds	300
gold slider with amethyst and diamonds	50
gold earrings with amethysts and diamonds	40
1.8" gold chain (wide)	100
1.8" gold chain (narrow)	20

subtotal \$ 1,130

David Cooper personal jewelry:

man's gold wedding band (from Paula)	35
man's gold wedding band (from Jane)	35

subtotal \$ 70

Jane Cooper personal jewelry:

gold engagement ring	800
gold wedding band	35
gold Omega chain	100
gold slider with opal and diamonds	50
gold earrings with diamonds	200
white gold ring with aquamarine	100

subtotal \$ 1,285

TOTAL \$ 2,485

* pawn shop values quoted after examination of each item by manager of
 PawnAmerica store, 8650 Lyndale Ave. South, Bloomington, MN 55420,
 882-888-8300

FULLER, SEAVER & RAMETTE, P.A.

A PROFESSIONAL ASSOCIATION

Timothy D. Fuller
Randall L. Seaver
James E. Ramette
Andrea M. Hauser
Roger B. Seaver

PORTLAND CORPORATE CENTER
12400 PORTLAND AVENUE SOUTH, SUITE 132
BURNSVILLE, MN 55337

Telephone (952) 890-0888
Facsimile (952) 890-0244

October 21, 2004

David and Jane Cooper
5201 Vincent Avenue South
Minneapolis, MN 55410

RE: David Lee Cooper and Jane Cameron Cooper
BKY No. 04-43282

Dear Mr. and Mrs. Cooper:

I am writing this letter in response to your October 13, 2004 correspondence. First, as to the firearms, subject to Bankruptcy Court approval, I will accept your offer of \$120 for the five firearms.

As to the jewelry, I will not accept your offer of \$1,650. The value I could get for it is \$2,485 if I take it to a pawn shop. The amount I will agree to sell it to you for, subject to Bankruptcy Court approval, is \$2,485. If you desire to purchase the jewelry, please make certain I receive a check in the amount of \$2,485 within two weeks from the date of this letter. If I have not received the check within two weeks from the date of this letter, please deliver the jewelry to my office at the above address at 9:30 a.m. on November 5, 2004 and I will liquidate it.

As to the exercise equipment, I intend to abandon that equipment.

As to the piano and coronet, subject to Bankruptcy Court approval, I will sell those to you for \$250.

As to the \$5,683.30, which was the total of 12 money orders, please provide me with copies of the money orders, together with statements from each of the entities to whom they were paid showing the date that each of those entities received the payment.

The total for the jewelry, piano, coronet, and firearms is \$2,855. Your check should be made payable to "Randall L. Seaver, Cooper Trustee."

Very truly yours,


Randall L. Seaver
Trustee

RLS:klf

cc: Clinton E. Cutler

EXHIBIT B

VIA FAX – THIS PAGE ONLY

5201 Vincent Ave. South
Minneapolis, MN 55410

Mr. Randall L. Seaver
Portland Corporate Center, Suite 132
12400 Portland Ave South
Burnsville, MN 55337

Re: Chapter 7 bankruptcy case no. 04-43282

Dear Mr. Seaver:

In response to your letter of October 21st:

- 1) I am reviewing the jewelry purchase question with my daughter. We will make a selection decision shortly and I will contact you with a revised offer. In the meantime, I will not be delivering a check or the jewelry to you.
- 2) I have today mailed you copies of the twelve money orders issued in May against our Alliance Bank checking account. These money orders were mailed to various insurance companies (listed in my October 13th letter to you) within a few days after May 14th, the date of issue, with one exception: the money order to Medica for \$512.54 was drawn in error, was cashed, re-deposited into our checking account, and the funds used for ordinary living expenses.

I do not have, nor would I expect to receive, statements from any of these insurance companies showing the date of payment receipt – such statements are not issued in the ordinary course of business. Our payments are simply made against periodic invoices for premiums due.

With a mailing date of the week of May 17th, it can be reasonably assumed that these payments were received by the insurance companies well before our June 9th filing date.

Sincerely,



David L. Cooper

cc: Jane Cooper, Clint Cutler

EXHIBIT C

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

BKY No. 04-43282

In re:

David Lee Cooper and Jane Cameron
Cooper,

UNSWORN CERTIFICATE

Debtors.

I, Kari L. Fogarty declare under penalty of perjury that on November 4, 2004 I mailed a copy of the following documents:

1. Notice of Hearing and Motion for Turnover of Property and Award of Attorney's Fees;
and
2. Order (proposed)

by first class mail, postage prepaid to the following entities:

David Lee Cooper
5201 Vincent Avenue South
Minneapolis, MN 55410

Jane Cameron Cooper
5201 Vincent Avenue South
Minneapolis, MN 55410

Clinton E. Cutler
Fredrikson & Byron, P.A.
200 South 6th Street, Suite 4000
Minneapolis, MN 55402-1425

Office of the United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Mark D. Stephenson
Stephenson & Sanford, P.L.C.
1905 Wayzata Boulevard, Suite 220
Wayzata, MN 55391

FULLER, SEAVER & RAMETTE, P.A.

Dated: November 4, 2004

By: /e/ Kari L. Fogarty
Kari L. Fogarty
Legal Secretary
12400 Portland Avenue South, Suite 132
Burnsville, MN 55337
(952) 890-0888

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

BKY No. 04-43282

In re:

David Lee Cooper and Jane Cameron
Cooper,

ORDER

Debtors.

This matter came on for hearing before this court on the motion of Randall L. Seaver, Chapter 7 Trustee, for turnover of property of the estate. Appearances, if any, were noted upon the record.

Upon the Motion of the Trustee, arguments of counsel, and the documents of record herein., and the Court being fully advised in the premises,

IT IS HEREBY ORDERED:

1. Within 2 days from the entry of this Order the Debtors shall turnover to the Trustee all scheduled "wedding ring and miscellaneous jewelry left from late wife's estate."
2. Within 2 days from the entry of this Order, the Debtors shall pay to the Trustee the sum of \$300 for attorney's fees incurred by the Trustee in bringing the turnover motion.

BY THE COURT:

Dated: _____, 2004

Nancy C. Dreher
U.S. Bankruptcy Judge